

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

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WRIT PETITION NO : 12938 of 1993

Between:

K.Rayapu Reddy, S/O Jogo Reddy
R/o Hyderabad.

..... PETITIONER

AND

- 1 The IV Assistant Judge (A Tribunal Constituted Under A.P. Co-operative Societies Act 1964) City Civil Court, Hyderabad.
- 2 The Duputy Registrar of Co-operative Societies Housing, Hyderabad at Hyderabad.
- 3 Kancharla Shobha Devi, W/o K.Sudhir, r/o Jyothi II Ramachandra Nagar, Vijayawada, Krishna District.
- 4 Kalyannagar Co-operative Housing Society through its President having its Office H.No.6-1-1063/B/2, Opposite to R.R.District Collectorate, Kairthabad, Hyderabad.
- 5 The Secretary Kalyannagaar Co-operative Housing Society Ltd., H.No. 6-1-1063/B/2, Opposite to RR District Collectorate, Karirthabad, Hyderabad.
- 6 B.Veeraswamy, President, Kalyannagar Co-operative Housing Society Ltd., Opposite to RR District Collectorate, Kairthabad, Hyderabad.
- 7 Chodagam Ashok,

(R7 is impleaded as per the Court order dt. 20.12.1993 in WPMP 21223/93)

(The case against R6 is dismissed for default as per the Court

Order dated 03.08.2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of CERTIORARY or any other appropriate Writ or Writs, order or direction, to call for records pertaining to case CTANo.1/89 on the file 1st respondent and quash the judgment and Decree dated 16.12.1997 passed in the above said case by restoring the Award dt19-11-1982 passed in A.R.C.No.89/82-G on the file of the second respondent.

Counsel for the Petitioner: MR.K.RAGHUVVEER REDDY

Counsel for the Respondent Nos 1 and 2: G.P.FOR COOPERATION

Counsel for the Respondent Nos 3 and 7: MR.G.KRISHNA MURTHY

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The Court made the following :

ORDER:

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The Writ Petition is filed with the prayer as follows:-

“to issue a Writ of Certiorari or any other appropriate Writ or Writs, order or direction, to call for records pertaining to case CTA No.1/89 on the file of the first respondent and quash the judgment and Decree dated 16-12-1991 passed in the above said case by

restoring the Award dated 19-11-1982 passed in A.R.C.No.89/82-/G on the file of the second respondent.”

The petitioner is a member of the fourth respondent-society. It appears that the said society acquired certain lands in S.No.128/1 of Yousufguda. After acquiring the land, the society made a lay out and allotted one plot in Survey No.14 to the petitioner for consideration. Though it is not very clear from the record, it is informed by the learned Counsel for the petitioner that the total consideration is Rs.3,030/-. The fourth respondent-society by a letter dated 13-07-1982, cancelled the allotment made in favour of the petitioner on the ground that the petitioner did not make the payment of the entire amount, and consequently, the same plot was allotted in favour of the third respondent. Admittedly, on such allotment, the fourth respondent-society transferred the property in the above mentioned plot No.14 in favour of the third respondent by a registered sale deed dated 28.06.1982. Aggrieved by the action of the fourth respondent-society, the petitioner initiated proceedings under Section 61 of the Andhra Pradesh Co-Operative Societies Act, 1964 (hereinafter referred to as “the Act”) praying for cancellation of allotment of the plot No.14 to the third respondent herein and for allotment of the same to the petitioner. The 2nd respondent, Deputy Registrar/Arbitrator, by his Award dated 19-11-1982 directed the fourth respondent-society herein to restore the plot No.14 in favour of the petitioner and hand over the possession of the same freeing from all encumbrances. Aggrieved by the same, the third respondent carried the matter in appeal before the Tribunal, under Section 76 (1) of the Act. On appeal, the IV Assistant Judge, City Civil Court, Hyderabad, the same was allowed by setting aside the order under appeal. Hence, the present writ petition.

Apart from the reasons given by the Appellate Authority in the impugned order, I am of the opinion that the order dated 19-11-1982 of the second respondent herein i.e, the Deputy Registrar, Co-Operative Societies is unsustainable for the reason that once the plot in dispute was transferred in favour of the third respondent herein, as admittedly it was done by registered sale deed dated 28.06.1982, such transfer cannot be set at naught by the Deputy Registrar of Co-operative Societies. It can be only made by a civil court, which is competent to pass such an order. The reason being transfer of property between the parties, if such transfer is required to be declared as illegal, there must be clear authority of law to make such a declaration.

The power to make such a declaration can be conferred by the law on some authority. It is the settled law of this land that a competent civil court is vested with such a power to declare transfers of property as invalid and ineffective in certain cases. No doubt, such a power can be conferred by the legislature on authorities other than a civil court subject to certain constitutional limitations.

The question in the present case is whether the 2nd respondent-Registrar acting under Section 61 of the Act is vested with such a power to declare transfers of property made between a co-operative society and are of it's numbers. The power under Section 61 of the Act is a power conferred on the Registrar for resolution of the disputes among the members of the society or the past members of the society or dispute between the members and the management of the society etc., The disputes that are capable of being resolved by the Registrar are also indicated in the explanation under Section 61 which reads as follows:-

“ Explanation:- For the purposes of this sub-section a dispute shall include---

- i. a claim by a society for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;
- ii. a claim by surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or other amount due to be admitted or not;
- iii. a claim by a society against a member, past member, or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property;

The explanation is only illustrative of the nature of the power but exhaustive in view of the inclusive clause. The illustrations are indicative of the nature of the disputes that can be adjudicated by the Registrar. No doubt, under clause (3) of the explanation, the Registrar has power to order the delivery of the possession of the land to the society or other immovable property resumed by it for breach of conditions, assignment or allotment. But the fact remains that such power to direct

delivery of possession extends only to the cases where the land is assigned or allotted without the transfer of the title. Section 62 of the Act throws some more light on the nature of the power of the Registrar.

Sub-Section (2) of Section 62 reads as follows:-

“Where the reference relates to any dispute involving immovable property, the Registrar or such person or arbitrator may order that any person be joined as a party who has acquired an interest in such property subsequent to the acquisition of interest therein by a party to the reference and any decision that may be passed on the reference by the Registrar or the person or the arbitrator aforesaid, shall be binding on the party so joined as if he were an original party to the reference.”

It can be seen from the above sub-section that the Registrar has power to order that any person who has acquired an “interest” in such property may be joined as party to the reference, and Section 62 (2) further declares that the decision of the Registrar binds the party including such newly added party who had acquired an “interest” in the property.

In the context of immovable property such as land, when the property is sold for consideration, it involves a transfer of the ownership in exchange for a price and it is settled position of law that ownership of land takes within its purview various interest in the land. But any one of those interests is not by itself equivalent to the ownership of the property. For example, the interest of a lessee of a land is an interest in the land. Similarly, the interest of a mortgagee or a licensee or an easement holder are interests in land, but none of them either individually or in combination with some other interest would amount to ownership of the land and they are various subordinate interests to the ownership of the land. When Section 62 (2) speaks of a party, who has acquired an interest in such property, I am of the opinion that having regard to settled position of the law on the connotations of the expression interest in the context of immovable property, the legislature only contemplated any or all the other interests other than the ownership of the property. Therefore, in my view, the Registrar of Co-Operative Societies acting under Section 62 (2) of the Act has no legal authority to order the cancellation of a sale of immovable property or declare such a sale of immovable property void. For the above mentioned reasons, I do not see any reason to interfere with the conclusion reached by the Appellate authority by its order, which is impugned in the present writ petition.

The Writ Petition is, therefore, dismissed but without costs.

J. CHELAMESWAR, J.

Dated: 24th March, 2005

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Copy to:

1. The IV Assistant Judge (A Tribunal Constituted Under A.P.Co-operative Societies Act 1964), City Civil Court, Hyderabad.
2. The Deputy Registrar of Co-operative Societies Housing, Hyderabad at Hyderabad.
3. Two C.Cs to the Government Pleader for Cooperation, High Court Buildings, High Court of A.P., Hyderabad. (O.U.T.)
4. Two C.D. Copies.

